

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



75-6127

DOCKET NO. 75-6127

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In The  
United States Court of Appeals  
For the Second Circuit

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Leo A. Popp,

Appellant,

-against-

Secretary of Health, Education and  
Welfare,

Appellee.

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On Appeal from the United States District  
Court for the Northern District of  
New York

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ANSWER

TO BRIEF OF APPELLEE

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By

Leo A. Popp, Appellant  
RD #1  
St. Johnsville, N.Y. 13452



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Received 2 copies of brief of Appellee on July 3, 1976, from Spalding Law Printing Co. - 313 Montgomery St. Rear - Syracuse, New York 13202.

It is unfortunate for justice sake that this brief was not apparently made with the help of pages 3, 4, & 5 of answer of Appellant to Appellee's motion to Dismiss Appeal - May 3, 1976 - 4 copies sent to Court of Appeals and 1 copy sent to U.S. Attorney. Motion denied by U.S.C.A. Second Circuit May 18, 1976. The above mentioned copies of answer of May 3, 1976 was sent by certified mail to U.S.C.A. and U.S. Attorney with return post card. Post cards returned shows receipt in Court & U.S. Attorney on May 4, 1976.

On page 3 of answer of Appellant to Appellee's Motion to Dismiss Appeal May 3, 1976 it states - "For conviences of anyone who wishes to review the record easily, I am submitting the items as contained on pre-argument statement 11/28/75."

It is so evident from the Appellee's Brief that on page 11 of Brief of Appellee that the Medical Report Index tr 872 - 876 & tr 843 & 847 could have been helpful for justice sake because so many important facts in Dr Pointons report were ignored - See to 875 as well as tr 782 & 785 for facts. On tr 785 Dr Pointon shows effect of Medication & No medication and how difficult it has been for me over the years.



It is also my opinion that this Pt. has made considerable effort to maintain his activity and for a long time should have received additional financial help so that he not subject himself to such fatiguing circumstances as he has reg. work on his farm & substitute teaching."

See page tr 782 for more. Dr. Pointon mentions AMCH and Johnstown Hospital - see tr 874, C69 & 71 for details - especially diabetic neuropathy, retinopathy and nephropathy & more. Then see to 782 or 875 - "for Pain in lower back and right leg many years duration. Elevated blood sugar and glucosuria several years duration. Periods of fatigue and weakness after short periods of effort. Weakness in lower back and radiating pain in right leg reduced by analgesics and bed rest - exertion exasperated these symptoms - frequent P.V.C.s of heart rhythm which worsen with excess effort. Fatigue & leg pain persists with effort." This was all taken from Dr. Pointon's report tr 782, but not mentioned in Brief of Appellee.

On page 9 of Appellee's Brief says - "fact that Mr. Popp has been found to be disabled and entitled to benefits by New York State Teacher's Retirement System, etc." - but no reference is made to tr 875 & 876 for Summaries of the Medical Reports which are found on tr 775 - 781 & letter about reports 744-745 - March 30, 1971 & April 9, 1971. After years of effort to get these reports - how can these reports justly be ignored. Look at tr 93 to 96 - also see to 67-68 for what was

done with Dr. Pointon's reports - see tr 36 to 38 for facts. Also application 1/26/72 and 3 pages attached - should be found in 202 - 210 copies of misc. papers and records of Index made by Dist Court 11/21/75. Again see pages 3 - 4 & 5 of Answer of Appellant to Appellee's Motion to Dismiss Appeal, May 3, 1976 for reference to page 161 of Index made by Dist. Court - answer to Motion for Summary Judgment and page 187 of same Index made by Dist Court 11/21/75 for more details.

In conclusion -

1 We ask for benefits computed according to determination 537 - 11/5/68 - as stated over & over again - See answer to Notice of Motion for Summary judgment May 5, 1975. Index by Dist. Court page 161 for more details with brief summary on page 25 of answer. More in Notice of Appeal Index page 187.

2 We ask for the \$216. deducted when net earnings for 1971 were \$661.29 - line 13a of application 1/26/72 copy sent with Notice of Appeal Sept - 12 - 1975 - must be found in Index of Dist. Court page 202 to page 210.

3 Again see pages 22 - 25 of answer to Motion page 161 - dated May 5, 1976. Also see "note" on page 4 of Answer of Appellant to Appellee's Motion to dismiss - this answer was dated May 3, 1976 sent certified - 4 copies to Court and 1 copy to U.S. Attorney certified received May 4, 1976.



4 Again I ask the Court to put a stop to false and derogatory statements - see tr 819 - 823 - & tr 860 - 864 for more details - see facts given in page 161 & 187 of Index of Dist. Court - as well as page 4 of Answer of Appellant to Appellee's Motion to Dismiss Appeal May 3, 1976 as mentioned before on page 22 - 25 of Answer to Motion for Summary Judgment, May 5, 1975.

Again facts were given by Leo A. Popp - tr 825 - also by Director of State Social Security 897-898 - last paragraph of tr 897 "services of Mrs. Popp are covered under Social Security and must be included in Town's Reports, if she is an employee of the Town or if she is performing Town Services as an employee of Town Supervisor." See tr 888 for W<sup>2</sup> & tr 894 - 895 & 896 for more details as well as 901 - 908 for more on this as well as tr 840 - 841 by Town Attorney David Jung - "Mr Popp received a letter indicating same was legal (tr 897 - 898) and based on said document, I so advised the Town Board" - Please read on for facts - but look at what was done by Manager - Steven Smrtic - tr 819 - 823 putting wife's earnings under mine - & sending false & derogatory statements to Justice Dept. & BD1 See tr 819 - 823 - using words of "coniving, circumventing splitting - puzzling". Why not get and give the facts from the records such as tr 888 - tr 897 - 898 - 840 - 841 894 - 895 - 896 - 901 - 908

See page 7 - Notice of Appeal Sept 12 - 1975 - where

about \$1000. added to my earnings (1973) in Judge Foley's decision & order of Aug 2., 1975 - why was this done on page 7 of Judge Foleys Decision - order? - Why? was issues as stated in answer to Motion for Summary Judgment May 5, 1975 - ignored in Judge Foley's decision & order - Aug 22, 1975 - See Notice of Appeal Sept 12, 1975 - page 187 of Index for details.

Respectfully submitted -

Leo A. Popp

Claimant

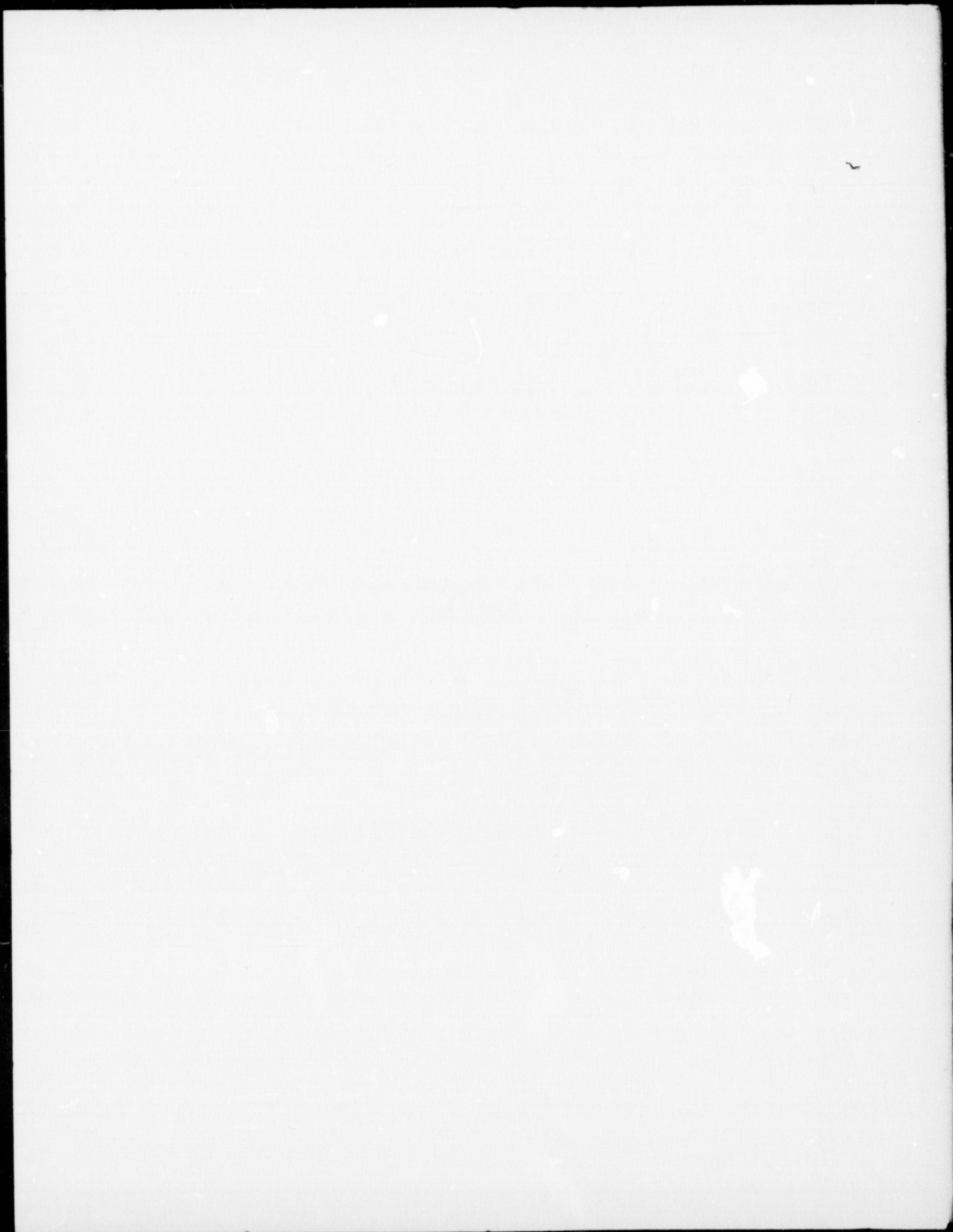
&

Appellant

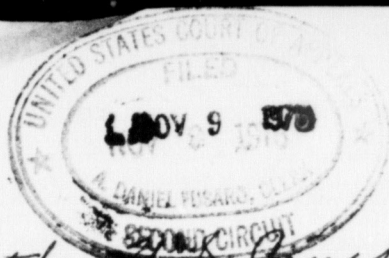
Dated - July - 11 - 1976

L.A.P.:e.a.p.





(4)



Docket No. 75-6127 113

In the Court of Appeals Second Circuit,  
by Leo A. Popp, appellant, against Ec. of New Appellee -  
on appeal from U. S. Dist. Court, Northern District  
of New York, by Leo A. Popp, appellant, R.D. St. Johnsville  
N.Y. - 13452. Petition for Rehearing under Rule 40  
and also Rule 35.

I wish to point out the points in the answer  
to Brief of Appellee July 11, 1976 - See page 1 of above  
reference is made to answer of Appellant to Appellee.  
Motion to dismiss Appeal May 3-1976. - Also reference  
to Pre argument statement 11/28/75. Also reference is  
made to pages 875-876 of Medical Report Index -  
pages - to 872-876. On pages 3 of above - reference  
is made to pages to 202-210 of 11/21/75 Index by  
Dist. Court plus more plus Conclusion - Referring  
to tr. 537- 11/5/68 - \$216. deducted when earnings were  
\$661.29 for 1971 - also reference to page 25 of page  
161 of Index May 5-1975. More on pages 4 & 5 of above  
July 11, 1976 answered by Leo A. Popp for facts with  
reference to tr. pages for more facts - examples - 860-  
864- 825- 897- 898- 894- 895- 896- 901- 908. See  
page 4 of above for wrong done - 819-823 and for facts  
- tr. 888- 897- 898- 840- 841- 894- 895- 896- 901- 908- also  
see last page of above dated July 11, 1976 for where  
\$1000. added to (1973) earnings - why?

On page 4 last paragraph of Aug 22, 1975 by  
Judge Foley - "therefore, the only issue before this Court,  
etc." page 5 - April 5-1970 - Sept 10-1974 - 834 - 914  
was missing - why? See tr 837-838 - evidence sent  
Aug 8, 1974 - 834 - said evidence was found but so much ignored



Amount of Earnings for Mr. Popp in 1973 is over \$2400, on tr 834 - but Judge Foley Aug 22-1975 says on page 7 says 1973 - \$3,437.99 and Mr. Smutek pays tr 822 - \$3245.05 after wife's pay was put on Mr. Popp's - tr 822.

What right has he to do this - put wife's pay under husband's? See facts given tr 825 by Leo A. Popp without any false & derogatory statement as given in tr 819-821-822 - facts also given on pages tr 888 W<sup>r</sup> - tr 897 by E. S. Sorenson, Director of State Social Security Agency. Also tr 840-841 by Attorney Jung.

Why wasn't tr 834-916 used to get facts - Look at what Judge Foley - says on page 7 about Dr. Pointon's report about Teachers' Retirement - look at tr 872-876 - Medical Report Index for easy review & for facts. Dr. Pointon's Reports & Teachers' Reports say the opposite of Judge Foley - Aug 22, 1975. Then on page 7 of Judge's decision Aug 22-1975 - "Viewing the record as a whole etc." but the evidence shows so plainly that so much is missing - see tr 849 plus more - and so ignored - see tr 837-838 - Then on page 837 Mr. Spring says (referring to tr 819-821-822) "which was so heavily presented & taken out of context by Mr. Smutek's reports. See 842-840-841 for more on this - and for facts given through 834-916 - but ignored. Why?

If the U. S. Court of Appeals do not help where duty is it to put a stop to this wrong doing. Corrections were made in tr 537 but ignored, so that my benefits were computed at \$127.40 retroactive & \$144. Current - but I was not paid one cent.

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Then in 1972 I was paid at the rate of \$110.40 +  
and \$16. deducted - See to 58B for details with  
the Application still missing. My net earnings  
in 1971 were \$661.29 - line 13a - Copy was sent to  
Dist. Court Sept 12, 1975.

This Application & 3 pages (these papers are very  
important) should be with copies of misc.  
papers & records 202- of Index 11/21/75 by Dist.  
Court.

If you need a copy of this or any other  
papers I am glad to supply so that justice  
might be done.

Thank you for any help you can give - and  
again I ask this under Rule 40 and or 35 of  
the Rules of Appellate Procedure.

Leo A. Poppe  
Appellant

Dated - Oct 31 - 1976

LAP:cap.



St. Johnsville, N.Y. R1 13452  
July 11, 1976

Hon. A. Daniel Fusaro, Clerk  
U.S. Court of Appeals  
U.S. Court House  
Foley Square  
New York, N.Y. 10007

JUL 14 1976

Dear Mr. Fusaro:

Enclosed please find enclosed original  
and 3 copies of Answer to Brief of Appellee - dated  
July 11, 1976.

Please file on behalf of Appellant and return  
enclosed Carbon Copy of this letter to under-  
signed with date of filing stamped thereon.

This letter and answer to Appellee's Brief are  
sent by certified mail with return post card  
to Clerk of U.S. Court of Appeals and U.S. Attorney

Leo A. Papp  
Appellant

C.C. to U.S. Attorney  
James M. Sullivan Jr.

L.A.P. - rap